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MARION GEORGES

6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA, ) CASE NO. CR.S-02-352-GEB  
11 v. Plaintiff, )  
12 ) UNOPPOSED MOTION TO WAIVE  
13 MARION GEORGES, ) DEFENDANT'S APPEARANCE UNDER  
14 ) FRCrimP 43(c)(1)(B); [proposed]  
Defendant. ) ORDER  
15 ) Judge: Hon. Garland E. Burrell Jr.  
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16  
17 Pursuant to Rule 43 of the Federal Rules of Criminal Procedure,  
18 the defendant, MARION GEORGES, through her counsel, RACHELLE BARBOUR,  
19 Assistant Federal Defender, hereby moves voluntarily to waive her  
20 appearance at sentencing on February 24, 2006. Ms. Georges is elderly,  
21 very ill, and lives in Florida. She is 70 years old and cannot walk  
22 more than a few feet. Her vision is severely impaired and she will  
23 soon undergo dialysis. She is under the care of Dr. Izu Nwakoby whose  
24 letter indicates Ms. George's dire medical status. (Exh. A.)

25 Federal Rule of Criminal Procedure 43 sets forth the requirements  
26 concerning a defendant's presence at various hearings. Rule 43(c)(1)  
27 provides for the waiver of continued presence. Specifically, it  
28 states, "A defendant . . . who had pleaded guilty or nolo contendere,

1 waives the right to be present under the following circumstances: . . .  
2 (B) in a noncapital case, when the defendant is voluntarily absent  
3 during sentencing." The effect of the waiver is as follows: "If the  
4 defendant waives the right to be present, the trial may proceed to  
5 completion, including the verdict's return and sentencing, during the  
6 defendant's absence."

7 Defense counsel has spoken with Ms. Georges in depth about the  
8 probation report, the recommended and possible sentences, her right to  
9 allocute at sentencing, and the effect of the attached waiver. Ms.  
10 Georges voluntarily waives her right to be present at sentencing, due  
11 to severe physical infirmity which keeps her from traveling cross-  
12 country. (Exh. B.) Defense counsel has confirmed that she has had  
13 the presentence report read to her by her daughter and understands its  
14 contents. Ms. Georges requests that the Court sentence her in absentia  
15 and that her attorney appear on her behalf. See United States v.  
16 Boykin, 222 F. Supp. 398 (D.Md. 1963) (felony plea and sentence in  
17 absentia due to illness of defendant and with written waiver).

18 Ms. Georges fits within the framework set forth by Rule 43 for the  
19 waiver of continued presence. She was initially present in court at  
20 her change of plea on June 25, 2004. She has signed a written waiver  
21 of appearance at sentencing. She seeks to absent herself voluntarily  
22 at the judgment and sentencing hearing on February 24, 2006 because of  
23 her ill health and inability to travel from Florida to Sacramento. The  
24 case is noncapital.

25 Because of Ms. Georges's frailty and ill health, the probation  
26 officer has recommended a sentence of five years probation and a term  
27 of 3 months in home detention. It is expected that the government will  
28 support this recommendation. Defense counsel has discussed this matter

1 with the government's attorney, who has authorized counsel to inform  
2 the Court that he has no opposition to the request that Ms. Georges be  
3 permitted voluntarily to waive her appearance at sentencing.

4 Ms. Georges respectfully requests that the Court allow her to  
5 absent herself voluntarily at sentencing.

6 Dated: February 9, 2006.

Respectfully Submitted,

7 DANIEL J. BRODERICK  
8 Acting Federal Defender

9 /s/ Rachelle Barbour

10 RACHELLE BARBOUR  
11 Assistant Federal Defender

12 **O R D E R**

13 Defendant Marion Georges may voluntarily absent herself at the  
14 judgment and sentencing in her case, presently set for February 24,  
15 2006, pursuant to Federal Rule of Criminal Procedure 43(c)(1)(B).

16 IT IS SO ORDERED.

17 Dated: February 9, 2006

18 /s/ Garland E. Burrell, Jr.  
19 GARLAND E. BURRELL, JR.  
20 United States District Judge